United Nations S/2003/513

Security Council

Distr.: General
28 April 2003

Original: English

Letter dated 21 April 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 22 November 2002 (S/2002/1280).

The Counter-Terrorism Committee has received the attached third report from Australia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 8 April 2003 from the Permanent Representative of Australia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I write in response to a letter from your predecessor, Ambassador Greenstock, of 15 November 2002, in which the Counter-Terrorism Committee sought a progress report on the passage and bringing into operation of the counter-terrorism legislation that was before the Australian Parliament at the time of submission of Australia's supplement to its second report to the Committee.

I am pleased to provide a further report which contains the information sought (see enclosure).

I should also congratulate you on your assuming the important office of Chairman of the Committee, and assure you of Australia's full cooperation and assistance during your entire term.

(*Signed*) John **Dauth**

Enclosure

Supplement to second report of Australia to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001

1. In a letter of 15 November 2002, the Committee sought a progress report on the passage and bringing into operation of the counter-terrorism legislation that was before the Australian Parliament at the time of submission of the supplementary report on 18 July 2002. This report responds to that request.

2. The Government's Counter Terrorism Legislation package consisted of the following Acts:

Security Legislation Amendment (Terrorism) Act 2002

Suppression of the Financing of Terrorism Act 2002

Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002

Telecommunications Interception Legislation Amendment Act 2002

Border Security Legislation Amendment Act 2002

Criminal Code Amendment (Anti-Hoax and Other Measures) Act 2002

The Security Legislation Amendment (Terrorism) Act 2000, Suppression of the Financing of Terrorism Act 2002, Border Security Legislation Amendment Act 2002 and Telecommunications Interception Legislation Amendment Act 2002 received Royal Assent on 5 July 2002. The *Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002* received Royal Assent on 3 July 2002. The *Criminal Code Amendment (Anti-Hoax and Other Measures) Act 2002* received Royal Assent on 4 April 2002. The Acts amended a range of legislation as described below.

Treason offence

3. The *Security Legislation Amendment (Terrorism) Act 2002* replaced the former treason offence in section 24 of the *Crimes Act 1914* with a new offence in section 80.1 of the Criminal Code from 6 July 2002. Under the new offence, assisting those engaged in armed hostilities with the Australian Defence Force constitutes treason even if those others are an organisation rather than another country, and even if there is no formally declared war. The offence applies to harms directed against the Governor-General and Prime Minister as well as the Sovereign.

Terrorism offences

4. The *Security Legislation Amendment (Terrorism) Act 2002* inserted the following new offences in the Criminal Code, with effect from 6 July 2002:

s 101.1	Engaging in a terrorist act (punishable by life imprisonment);
subs 101.2(1)	Providing / receiving training connected with a terrorist act[1] - knowing the connection (25 years imprisonment);

[1] The phrase "connected with a terrorist act" is a shorthand for the phrase "connected with preparation

subs 101.2(2) Providing / receiving training connected with a terrorist act - reckless as to the connection (15 years imprisonment);

subs 101.4(1) Possessing a thing connected with a terrorist act - knowing the connection (15 years imprisonment);

subs 101.4(2) Possessing a thing connected with a terrorist act - reckless as to the connection (10 years imprisonment);

subs 101.5(1) Collecting / making a document connected with a terrorist act - knowing the connection (15 years imprisonment);

subs 101.5(2) Collecting / making a document connected with a terrorist act - reckless as to the connection (10 years imprisonment);

s 101.6 Doing acts in preparation for or planning a terrorist act (life imprisonment).

5. The phrase "terrorist act" is defined in section 100.1 as an act, or threat of action, that is done or made with the intention of advancing a political, ideological or religious cause; and done or made with the intention of either coercing or influencing by intimidation an Australian government or the government of another country; or intimidating the public or a section of the public. The act must also cause a person serious physical harm or death, or involve serious risk to public health or safety, serious damage to property, or serious interference with an electronic system, or be a threat to do any of these acts.

6. Advocacy, protest, dissent and industrial action is excluded from the definition of "terrorist act" if not intended to cause serious physical harm to a person; or to cause a person's death; or to endanger the life of a person, other than the person taking the action; or to create a serious risk to the health or safety of the public or a section of the public.

Terrorist organisations offences

7. The *Security Legislation Amendment (Terrorism) Act 2002* inserted the following new offences directed against terrorist organisations in the Criminal Code, with effect from 6 July 2002:

subs 102.2(1) intentionally directing the activities of a terrorist organisation knowing it is a terrorist organisation (25 years imprisonment);

s 102.3 intentionally being a member of a terrorist organisation listed by the UN Security Council under a resolution relating to terrorism, knowing it is a terrorist organisation (10 years imprisonment);

subs 102.4(1) intentionally recruiting a person to a terrorist organisation, knowing it is a terrorist organisation (25 years imprisonment);

subs 102.5(1) intentionally providing training to or receiving training from a terrorist organisation, knowing it is a terrorist organisation (25 years imprisonment);

subs 102.6(1) intentionally receiving funds from or making them available to a terrorist organisation, knowing it is a terrorist organisation (25 years imprisonment);

subs 102.7(1) intentionally providing support or resources to a terrorist organisation that would help it engage in (in effect) terrorist related activities, knowing it is a terrorist organisation (25 years imprisonment).

Each of the offences except the membership offence is mirrored by a subsection (2) offence applicable where the defendant is reckless to the organisation being a terrorist organisation, carrying a maximum penalty of 15 years imprisonment.

8. The definition of "terrorist organisation" in subsection 102.1(1) is central to the operation of each of the offences. There are two alternate ways in which an organisation can be determined to be a terrorist organisation. First, if a person is prosecuted for one of the terrorist organisations offences, an organisation is a terrorist organisation if a court is satisfied beyond reasonable doubt that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act occurs). Secondly, if the organisation is specified by regulation. A regulation can be made only if the Minister is satisfied on relevant grounds that the organisation is identified in or pursuant to a decision of the United Nations Security Council relating to terrorism and that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act occurs). Regulations cease to have effect two years after their commencement.

Financing of terrorism offence

9. The *Suppression of the Financing of Terrorism Act 2002* inserts a new section 103.1 into the Criminal Code, which makes it an offence to (intentionally) provide or collect funds, reckless as to whether those funds will be used to facilitate or engage in terrorism. The maximum penalty is life imprisonment. The provision commenced on 6 July 2002.

Financial intelligence provisions

10. The *Suppression of the Financing of Terrorism Act 2002* amended section 16 of the *Financial Transactions Reports Act 1988*, commencing on 5 July 2002, to oblige cash dealers to report suspected terrorist-related transactions. In addition, the Director of the Australian Transaction Reports and Analysis Centre (Austrac, Australia's financial intelligence unit), the Australian Federal Police Commissioner and the Director-General of Security have been empowered to disclose financial transaction reports information directly to foreign countries, foreign law enforcement agencies and foreign intelligence agencies, subject to appropriate undertakings to protect the confidentiality of the information, control the use of the information and ensure that the information is used only for the purpose for which it was communicated.

Asset freezing provisions

11. The *Suppression of the Financing of Terrorism Act 2002* inserted a new Part 4 of the *Charter of the United Nations Act 1945* ("the Act") to replace the *Charter of the United Nations (Anti-terrorism Measures) Regulations 2001* as the mechanism to implement Australia's obligations to freeze terrorist assets under Security Council resolution 1373 (2001). These amendments commenced on 13 December 2002.

12. Section 20 makes it an offence for a person who holds a "freezable asset" to use or deal with the asset, or allow the asset to be used or dealt with, or facilitate the use of the asset or dealing with the asset. Section 21 makes it an offence to, directly or indirectly, make an asset available to a proscribed person or entity. A "freezable asset" is an asset owned or controlled by a "proscribed person or entity", or an asset listed by the Minister under section 15 of the Act, or is derived or generated from such assets. A "proscribed person or entity" is a person or entity listed by the Minister under section 15 or a person or entity proscribed by regulation under section 18. Section 15 provides for the Governor-General to make regulations prescribing the matters of which the Minister must be satisfied before listing a person, entity or asset, to give effect to a decision that the Security Council has made under Chapter VII of the Charter of the United Nations relating to terrorism and dealings with assets. Section 22A provides for the Governor-General to make regulations relating to procedures for the implementation of asset freezing.

13. Pursuant to sections 15 and 22A, the Governor-General made the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002*. Regulations 2 to 6 provide for the transition between the old and new asset freezing mechanisms and the "prescribed matters" provided for in section 15 (that is, a person, entity or asset referred to in paragraph 1(c) of resolution 1373 (2001). Regulations 7 - 12 provide for the procedure referred to in section 22A.

Air security officer program

14. The *Security Legislation Amendment (Terrorism) Act 2002* also amended the *Australian Protective Service Act 1987* and the *Crimes (Aviation) Act 1991* to extend the arrest without warrant powers of Australian Protective Services officers to the terrorist and terrorist bombing offences and ensure that these powers may be exercised on intrastate flights in relation to hijacking and other offences in Part 2 of the Crimes (Aviation) Act. The *Australian Protective Service Act 1987* sets out powers in relation to certain offences for the Australian Protective Service, such as the power of arrest without warrant for hijacking on Australian aircraft. The functions and powers of the Australian Protective Service are contained in sections 6 and 13-18 of the *Australian Protective Service Act 1987*.

Review provision

15. Section 4 of the *Security Legislation Amendment (Terrorism) Act 2002* lays down a requirement for a review of the provisions of the *Security Legislation Amendment (Terrorism) Act 2002*, *Suppression of the Financing of Terrorism Act 2002*, *Border Security Legislation Amendment Act 2002* and the *Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002*. This must be undertaken as soon as practicable after the third anniversary of the commencement of the amendments (i.e., as soon as practicable after 6 July 2005). In the first instance, there will be a review by a committee chaired by a retired judicial officer appointed by the Attorney-General. This committee's report will be forwarded to the Parliamentary Joint Committee on the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service and the Defence Signal Directorate. This second committee is then to undertake a review of the provisions, pursuant to section 29(1)(ba) of the *Intelligence Services Act 2001* and report to Parliament.